

BOARD OF EXAMINERS IN PSYCHOLOGY

Telephonic Board Meeting Minutes

Date: August 30, 2005

Time: 11:00 a.m., C.S.T.

Location: Johnson Room
Ground Floor, Cordell Hull Building
425 Fifth Avenue North
Nashville, TN 37247-1010

Members Present: Debra Davenport, M.A., Sr. PE, Chair
Carl Gilleylen, Psy.D., Vice-Chair
Robert Kores, Ph.D.
Donald Brookshire, Psy.D.
Carolyn West-Willette, Ed.D.
William Vaughan, Ph.D., Sr. PE
Janice Martin, Ph.D.

Members Absent: Michael Stagg, Esq., Consumer Member

Staff Present: Melody Spitznas, Administrative Services Assistant
Barbara Maxwell, Administrative Director
Lea Phelps, Disciplinary Coordinator
Robert Kraemer, Advisory Attorney Office of General Counsel
Shiva Bozarth, Litigating Attorney Office of General Counsel

Others Present: David M. McElroy, Ph.D., Respondent
Michael Radford, Attorney for the Respondent

Upon determination of a quorum, the telephonic meeting was called to order at 11:00 a.m. to consider the Petition for Reconsideration submitted by David M. McElroy, Ph.D. regarding the revocation of Dr. McElroy's license at the July 20 - 21, 2005 board meeting.

Roll call votes were conducted to ensure each participant was connected, that each participant could hear all responses and all participants received the Petition for Reconsideration and T.C.A. §4-5-317, which governs petitions for reconsideration and requires the Board to consider the petition within twenty (20) days of its receipt from Ms. Spitznas. A motion was made by Dr. West-Willette, seconded by Dr. Gilleylen, to proceed with the telephonic meeting. The motion carried. A motion was made by Dr. Martin, seconded by Dr. Gilleylen, to find that the requirements for an electronic meeting had been met. The motion carried.

Mr. Shiva Bozarth, Assistant General Counsel, presented the response to the petition. Mr. Bozarth stated that this matter had been fully considered by the Board at the July 21, 2005 board meeting and that a petition for reconsideration would not be appropriate, as there was no basis for such. Mr. Bozarth apologized to the Board for the entry of the felony judgment of theft and acknowledged that it did not apply to Dr. McElroy and again apologized for the error. Mr. Bozarth addressed the fact that Dr. McElroy asserted that since he was a retiree of the state and receiving retiree benefits that the Department of Health should have checked with the Department of Personnel to obtain his current address. Mr. Bozarth stated that to his knowledge no one within the Department knew that Dr. McElroy was a retiree of the state and receiving benefits and had the Department known to check the personnel records with the state would have done so. Mr. Bozarth stated that statute 63-1-108 states licensees are obligated to notify the board within 30 days upon an address change and the address on record shall be deemed sufficient for service of process. Mr. Bozarth stated that his office had attempted to contact Dr. McElroy via U.S. mail on at least six (6) occasions in an attempt to locate Dr. McElroy. Mr. Bozarth stated that furthermore, Dr. McElroy's counsel filed a motion of withdrawal on May 20, 2005 due to losing contact with Dr. McElroy and all reasonable efforts to contact Dr. McElroy had been unsuccessful. The administrative law judge granted their motion to withdraw on July 19, 2005 and the Board found based on the affidavit and evidence presented to them, to proceed with the case by default at the July 21, 2005 meeting. Mr. Bozarth stated the continuance in the matter and the reason that this case had been going on since 1999 is due to the Respondent requested some discovery/interrogatories from the state on May 24, 1999. The discovery request was complied with by the state on July 22, 1999 and since then there has been no communication from the Respondent. Mr. Bozarth stated that the Respondent failed to maintain a proper address with the state fully knowing there was pending litigation that directly affected him.

A motion was made by Dr. Martin, seconded by Dr. Kores to hear from the opposing counsel with a time limit of seven (7) minutes. The motion carried. Michael Radford, attorney for the Respondent, stated that Dr. McElroy was retired from the State of Tennessee and had been receiving pension checks and did not understand why the Department of Health did not have access to this information. Mr. Radford stated that this matter was initially filed against his client in January of 1999. At that time, Dr. McElroy retained counsel, responded to the charges against him and participated in discovery. Mr. Radford stated the State allowed this matter to lie dormant over five years with no effort to prosecute and Dr. McElroy had no reason to expect recommencement of prosecution in this matter when he became ill and was hospitalized. Mr. Radford stated had Dr. McElroy known of the hearing, he would have participated in the hearing. Mr. Radford brought up the testimony of Kimberly Garbler, stating her testimony was untrue based on hearsay and speculation. Mr. Radford explained that Dr. McElroy had a confrontation with this witness in 1996. At that time, Dr. McElroy was at home with his two small children who were visiting with him pursuant to his divorce decree and the woman he was dating and who became his wife, and the woman who was his live-in housekeeper and babysitter. Upon a warning from a neighbor that someone was in the street and pointing something at his house and that it might be a gun. Dr. McElroy went outside and confronted this person, who turned out to be Kimberly Garbler. Mr. Radford stated that the testimony of Dr. Terry Edwards is very surprising to Dr. McElroy. Mr. Radford stated that Dr. McElroy has no recollection of any naked pictures being in the office floor, nor Dr. Edwards ever bringing this to his attention. Mr. Radford brought up the issue of beer being in the refrigerator, and stated that the allegation was

true. Mr. Radford stated that refrigerator was for office personnel and was not in an area open to or available for use by patients or other non-personnel. Mr. Radford stated that Dr. Edwards and Dr. McElroy had not practiced together since 1997 and Dr. Edwards would have no knowledge of Dr. McElroy's present condition or conduct. Mr. Radford asked the Board to reconsider and vacate its prior ruling and allow Dr. McElroy the opportunity to be heard on the charges against him.

Dr. Martin made a motion, seconded by Dr. Vaughan, to deny the petition. A roll call vote was conducted and the motion did not carry. Dr. Brookshire made a motion, seconded by Dr. West-Willette, to consent to a future hearing to allow Dr. McElroy to present additional evidence and drop the default issue. The motion carried. Dr. Vaughan made a motion, seconded by Dr. Gilleylen, to hear the case in January 2006. The motion carried. Dr. Vaughan made a motion, seconded by Dr. Martin to adjourn the telephonic meeting at 12:20 p.m. The motion carried.